

Motion Picture Association response – Call for evidence: Age Appropriate Design Code

Overview

The MPA welcomes the opportunity to respond to the ICO's consultation on the Age Appropriate Design Code. We believe that the recognition of the unique challenges and potential harms that children are exposed to while online is essential to achieving the comprehensive approach needed to ensure safety online. The MPA supports the establishment of the Age-Appropriate Design Code, and we believe that developing a strategy to adequately address the numerous and varied potential harms young people can be exposed to online will require a joined-up strategy from Government, rights holders, and online platforms that recognises the full scope of children's activities online.

It is clear the task of creating, and maintaining, a safe, reliable, and open online environment for children to operate in is one that presents numerous difficulties. It is a challenge that will require support and dedicated action from all ISS providers to ensure that they have robust age-verification procedures in place, alongside the necessary steps to maintain compliance with the GDPR, the ICO's guidelines, and, in due course, the Age Appropriate Design Code.

Rightly, the Government is placing a greater emphasis on making the internet a safer place for all users, particularly children, and the explicit recognition in the GDPR that children's personal data merits specific protection is a welcome step forward. However, the Government's efforts have not yet adequately recognised that children and young people may encounter disturbing material when they access the illegal ecosystem that supports and makes available infringing and potentially harmful content online. Illegal content, by its very nature, can be some of the most harmful, whether it is accessed through cyberlockers, streamed for free, downloaded using the internet or acquired through illegal subscription services, and the MPA has been a strong voice against further proliferation of this illegal, and often age-inappropriate and malware-laden content. However, in the context of this submission, our main point is that the environments that offer that illegal content are often the homes for (and even promoters of) **extremely** egregious age-inappropriate and adult content (including advertising and links to other potentially harmful sources).

The issue is not related only to protecting intellectual property and the economic harm that is caused to creators by copyright infringement, although this is of significant concern to the MPA and our member companies. It is also that those same sources of infringing content present considerable consumer safety and child protection concerns.

A complete Government strategy should address illegal and age-inappropriate content, the impact of the propagation of malware and viruses, the growing problem of internet scams and online fraud and other forms of harm wherever these are found - including focusing attention on the access routes (including Search, social media, ISDs and Add-ons) and the online environments via which infringing content is offered and/or found and on the individuals and organisations that conduct their business in those environments.

It is therefore vital that the Government pursues a joined up and comprehensive approach to ensuring safety online, recognising that the world of infringing content presents the same level of risk and harm for children and adults than the more traditional online environments on which Government's work with ISPs and others has been focused to date.

Devices, software, and online platforms that provide and promote access to infringing content should be responsible for adhering to regulatory and legal requirements for child safety and consumer protections as well as to the appropriate requirements for protection of IP and copyright. The most recent analysis from the Intellectual Property Office showed that 22 per cent of children aged 12-15 had accessed or downloaded infringing content online, while further analysis showed that approximately 6.5 million internet users continue to access illegal content.

The Age Appropriate Design Code, alongside mechanisms such as the Digital Charter, the Creative Industries Sector Deal (and the Government's wider Industrial Strategy) and the long-awaited report from the IPO's Call for Views on Illicit Streaming Devices, is an essential element to achieving a safer online environment for children, and for all those operating in the online environment.

Section 1: Views and Evidence

Development needs of children at different ages

Q1. In terms of setting design standards for the processing of children's personal data by providers of ISS (online services), how appropriate you consider the above age brackets would be (delete as appropriate):

Very appropriate

Q1A. Please provide any views or evidence on how appropriate you consider the above age brackets would be in setting design standards for the processing of children's personal data by providers of ISS (online services)

The MPA welcomes the inclusion and recognition in the code of the different and evolving capacities of children in different age groups, and strongly agrees that consideration of this is an important element of developing a comprehensive approach to online safety. The MPA is increasingly concerned about the numerous ways that even children in very youngest of age groups can access illegal and potentially harmful content online and while the Government has made progress in facilitating the application of age-verification models, this has yet to adequately address the illegal ecosystems that support the network of infringing content. Given that the proposed code covers all ISS services which are 'likely to be accessed by children' we would urge that the ICO give consideration to how young children can be protected from potential harms associated with accessing the multitude of illegal services that carry infringing content.

Q2. Please provide any views or evidence you have on children's development needs, in an online context in each or any of the above age brackets.

The Government has rightly recognised the importance of developing digital literacy through education from the earliest ages. The rapidly evolving nature of all aspects of illegal, infringing, inappropriate and potentially harmful content online means that education must continue to be an essential aspect of any online safety strategy. However, we feel it is important that the code not be viewed in terms of varying requirements, based on age bands. All children develop at different rates and, in developing digital literacy, we feel the most effective approach is to ensure that children of all ages are taught to critically assess all the content they encounter online. This will help to ensure that they can identify inappropriate and illegal content and, crucially, know how to properly report such material.

The United Nations Convention on the Rights of the Child

The Data Protection Act 2018 requires the Commissioner to take account of the UK's obligations under the UN Convention on the Rights of the Child when drafting the Code.

Q3. Please provide any views or evidence you have on how the Convention might apply in the context of setting design standards for the processing of children's personal data by providers of ISS (online services)

***Article 5 (parental guidance and a child's evolving capacities)** Governments must respect the rights and responsibilities of parents and carers to provide guidance and direction to their child as they grow up, so that they fully enjoy their rights. This must be done in a way that recognises the child's increasing capacity to make their own choices.*

Lack of parental controls and age inappropriate content

Government has recognised the constantly evolving network of illegal and harmful content that exists online and has been working hard with ISPs and online platform providers to reduce the risk of children encountering content online or in broadcast material that is not appropriate for their age group.

However, this action, including the implementation of age-verification applications and the strengthening of parental control solutions has primarily addressed the content ecosystems which are generally accessible via the authorised content providers and the ISPs' products and infrastructure that deliver them to consumers.

Not enough has been done to deal with the age-inappropriate content and advertising that is available across the huge, and highly monetised, landscape of the infringing content ecosystems or the various other forms of harm that they present, particularly to younger users.

The accessibility and ease of engagement with internet piracy significantly increases the exposure of children to the content that they offer – and this has been made even worse by the proliferation of

ISDs among UK households. This issue has also been long present on more traditional streaming websites, with adverts to gambling or pornographic content extremely prevalent.

With this in mind, we feel it is essential that the coordinated efforts of the Government, industry, and the ICO should seek to bring the full scope of the online world within the parameters and protections of the GDPR and the Age Appropriate Design Code. Wherever possible, any additional regulation brought forward should apply to all activity online. Ensuring that even infringing websites, along with all other sources of illegal content online, are forced to accede to the terms of the Code is essential to achieving the comprehensive approach that is necessary to create a safer online environment.

The rapid increase in use of ISDs presents a new copyright infringement challenge whilst also placing consumers at risk. In the first instance, many consumers are not aware that these devices are infringing copyright when they purchase them, as some of these devices can be used for legal purposes. Content infringing ISDs are available in the form of a box or stick and either incorporate professionally pre-loaded platforms and content-accessing software, or may be purchased blank, but "packaged" with instructions for incorporating illegal third party plugins or Add-ons and then configured using the instructions.

In addition, legal devices (such as the Amazon Firestick) can be altered to facilitate illegal access to content, often through "hacking" the device using instructions easily accessible online at YouTube.com and other services. Once loaded up with the necessary platform software and Add-ons, these types of devices provide unauthorised access to thousands of streams, or other infringing sources, of television, film, sport, music and other content available online. These types of devices are readily available online and can be found on mainstream marketplaces such as eBay and Facebook.

The latest results of the IPO's Online Copyright Infringement found that 15 per cent of UK internet users aged 12+ consumed at least one item of online content illegally, with that number rising to 22 per cent for users aged 12-15.¹ Notwithstanding obvious concern that the content itself infringes copyright law and is therefore illegal (even if it is appropriate for children to see), the lack of parental controls and age-verification provision means that there is nothing to prevent a child from accessing seriously inappropriate content by clicking on a movie option or selecting an Add-on which provides pornographic content.

The risk of exposure to explicit and age-inappropriate, potentially harmful, content is particularly prevalent as the content on these devices is most commonly viewed through a shared family television. Where parents may have set parental controls on their home network hardware and/or in their profiles for subscriptions to authorised content (e.g. Netflix), there is currently no provision for them to do so for ISD Add-ons or for many online Apps accessible from mobile and tethered devices.

¹ IPO - Online copyright infringement tracker survey (8th Wave)



Industry Trust research² found that parental control measures which can be put in place by internet service providers, cannot apply to programmes viewed through ISD apps and Add-ons. There is significant evidence that ISDs are exposing children to inappropriate content. A technical review undertaken by INCOPRO found that 36% of advertising provided to users of set top boxes/sticks was of an adult nature. A further study for ICM³ found that one in 10 users had reported seeing offensive pop-ups or adverts when viewing content through unofficial Add-ons, a similar number also reported encountering age inappropriate content.

A survey of parents⁴ who admit to using these devices to view content with their families found that more than 60% were entirely unaware of the type of content, both age-inappropriate or harmful, that they were exposing their children to.

The Government is due to publish the much delayed response to its call for views on how it plans to tackle these devices and associated services. The industry looks forward to reviewing Government's proposals and will continue to support a coordinated approach to addressing the challenges and potential harms presented by these devices.

Aspects of design

The Government has provided the Commissioner with a list of areas which it proposes she should take into account when drafting the Code.

These are as follows:

- default privacy settings,
- data minimisation standards,
- the presentation and language of terms and conditions and privacy notices,
- uses of geolocation technology,
- automated and semi-automated profiling,
- transparency of paid-for activity such as product placement and marketing,
- the sharing and resale of data,
- the strategies used to encourage extended user engagement,
- user reporting and resolution processes and systems,
- the ability to understand and activate a child's right to erasure, rectification and restriction,

² 'IPTV Piracy: A study on set-top box and stick infringement for the industry'

³ As indicated in the Industry Trust for IP Awareness study on 'IPTV Piracy: A study on set-top box and stick infringement for the industry'

⁴ 'IPTV Piracy: A study on set-top box and stick infringement for the industry'

- the ability to access advice from independent, specialist advocates on all data rights, and
- any other aspect of design that the commissioner considers relevant.

Q4. Please provide any views or evidence you think the Commissioner should take into account when explaining the meaning and coverage of these terms in the code.

N/A

Q5. Please provide any views or evidence you have on the following:

Q5A. about the opportunities and challenges you think might arise in setting design standards for the processing of children's personal data by providers of ISS (online services), in each or any of the above areas.

Q5B. about how the ICO, working with relevant stakeholders, might use the opportunities presented and positively address any challenges you have identified.

Q5C. about what design standards might be appropriate (i.e. where the bar should be set) in each or any of the above areas and for each or any of the proposed age brackets.

Q5D. examples of ISS design you consider to be good practice.

Q5E. about any additional areas, not included in the list above that you think should be the subject of a design standard.

Default privacy settings

The MPA supports the application of a high bar of data privacy for children, as standard, to all devices and online services likely to access a child, or be accessed by children. However, we would strongly urge the consideration of potential vulnerabilities of large quantities of personal data that can be put at risk by the use of illegal and infringing services online. Users of such services, which include a significant proportion of children, can open themselves up to a considerable direct risk from malware, adware or other viruses, all of which can have significant consequences to the protection of personal data.

Data minimisation standards

We agree with the provisions in the GDPR for the provision of age-appropriate privacy notices for children, and believe that repeated and frequent offers for age-appropriate flags and notices for children to delete the data they have created could be used effectively both to minimise collection and retention of data and to educate children on the need to protect their personal data. Alongside this, frequent reminders to adults to set privacy settings on their devices to suit the data protection needs of the youngest users, would be positive step. However, this should also be accompanied by reminders of the need to be aware and vigilant over the data protection risks associated with accessing the illegal ecosystems that exist online.

User reporting and resolution processes and systems

Significant efforts are made to report infringing, illegal and harmful content online. Copyright owners alone spend millions of pounds annually combatting these issues, and countless hours are devoted to identifying this type of content. These efforts are one part of the valuable role that rightsholders play in creating and maintaining a safer online environment.

For example, for notice-sending (addressing files/sources/services directly and/or links to infringing content files), rightsholders must identify the infringing content, notify the platform and follow up on whether the content is removed - an incredibly time consuming and arduous process for rightsholders in all sectors of the Creative Industries. In 2015 alone MPA member studios sent notices with respect to more than 46.5 million URLs to hosting sites - and a further 57.7 million URLs to sites devoted to search. However, the film industry is not alone in its efforts. Between January and December 2017, the British Phonographic Industry submitted over 200 million URLs to the Google and Bing search engines requesting the removal of infringing search results. To further illustrate the scale of the problem, since 2011, BPI has sent over 605 million removal requests.⁵

Therefore, we believe that it is essential that online platforms acknowledge that they should be playing a greater role in reducing the uploading, availability and promotion of known sources of infringing and potentially harmful content via their platforms. The MPA has welcomed the ongoing dialogue and roundtable process between rightsholders and online platforms, established by the Creative Industries Sector Deal, and we are committed to the Government's aim of establishing cooperative measures aimed at significantly reducing the level of online infringement in the UK.

The key principle, we believe, is that online platforms must be required to take **proactive** measures to detect/remove illegal content online – and not only react to notices received. They should also refrain from providing their services to anonymous operators. The adoption of the voluntary code of practice for search engines, though not as effective as it could be, has been a welcome first step, eventually leading to the ongoing Sector Deal roundtables. However, there are a number of further measures both search engines and increasing social media and online retail platforms could be taking to ensure online safety.

There should be clearly defined responsibilities for platforms, including, but not limited to:

- Tackling the availability of illegal, harmful and infringing content on sites and services that they host - using a variety of proactive tools (filtering, artificial intelligence) and reactive measures (including notice and staydown).
- Ensuring sufficient transparency from registrants to support enforcement against illegal, harmful and infringing content
- Providing rightsholders and law enforcement with sufficient information to identify and report illegal, harmful and infringing content.

Therefore in practice, platforms should be responsible for acting against illegal and harmful content available on, or promoted via, their platforms. They should be required to take a swift, proactive approach to prevent the availability of - and take down - such content. They must also demonstrate

⁵ Intellectual Property Office, IP Crime and Enforcement Report 2017/18



a commitment to public education to ensure users are better able to identify infringing, illegal or harmful content and understand how to report it.

In addition, platforms should do more to ensure that service providers using their platforms comply with Article 5 of the E-Commerce Directive on online transparency. In many cases this is currently being disregarded by those seeking to cause harm to other users (including members of the public) by spreading malware and by facilitating the proliferation of fraud and other “scam” activity, network infections as well as content that infringes copyright.

The MPA is confident that the Sector Deal roundtables will mark a step forward in tackling these issues. However, given the clear implications for child online safety, we believe that this should be a key consideration for the ICO in the development of the Age Appropriate Design Code.

Q6. If you would be interested in contributing to future solutions focussed work in developing the content of the code please provide the following information. The Commissioner is particularly interested in hearing from bodies representing the views of children or parents, child development experts and trade associations representing providers of online services likely to be accessed by children, in this respect.

Name: [REDACTED] Motion Picture Association UK Representative

Email: [REDACTED]@mpaa.org

Brief summary of what you think you could offer

The Motion Picture Association represents the major companies that invest in, produce, distribute and market film and TV content in the UK and has been a leading voice amongst rightsholders. The MPA, and its member companies, are involved in considerable ongoing efforts to report infringing, illegal, and potentially harmful content online. The MPA are signatories to the Search Voluntary Code of Practice, and are involved in the ongoing series of roundtable discussions from the Creative Industries Sector Deal.

Further views and evidence

Q7. Please provide any other views or evidence you have that you consider to be relevant to this call for evidence.

Section 2: About you

Other?	
Please specify:	<input checked="" type="checkbox"/>
Trade association representing rightsholders	